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INTERSTATE COMMERCE COMMISSION

Conditional Sale Agreement

Dated as of May 1, 1971

Between

PULLMAN INCORPORATED
(Pullman-Standard division)

And

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY**

**For Purchase of
Five Hundred
Covered Hopper Cars**

Agreement and Assignment

Dated as of May 1, 1971

Between

PULLMAN INCORPORATED
(Pullman-Standard division)

And

**CONTINENTAL ILLINOIS NATIONAL BANK AND
TRUST COMPANY OF CHICAGO**

Conditional Sale Agreement, dated as of May 1, 1971, by and between **PULLMAN INCORPORATED** (Pullman-Standard division), a Delaware corporation (hereinafter called "Manufacturer" or "Owner" as more particularly set forth in Paragraph 12 hereof), and **THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY**, a Delaware corporation (hereinafter called "Buyer");

WITNESSETH THAT:

In consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. Manufacturer hereby agrees to construct, in accordance with the Manufacturer's Proposals and Buyer's Contract hereinafter referred to, and to sell and deliver to Buyer, and Buyer hereby agrees to buy from Manufacturer and to accept delivery of, and to pay therefor, all as hereinafter set forth, the following described railroad equipment:

Five Hundred (500) 4427 cu. ft. capacity Covered Hopper Cars with 100-ton roller bearing trucks, bearing Buyer's road numbers 312300 to 312799, both inclusive—all as described by Manufacturer's Proposals dated August 5 and October 21, 1970, and Buyer's Contract No. 10643, dated November 13, 1970, as supplemented on February 23, 1971.

The above Manufacturer's Proposals and Buyer's Contract, including such modification thereof as may have been agreed upon in writing by the Manufacturer and the Buyer, are hereinafter referred to as the "Specifications". All of said cars are hereinafter sometimes collectively referred to as the "Equipment", and such cars singly are hereinafter sometimes referred to as a "Unit". Said Specifications are, by reference, made a part of this Agreement as fully as though expressly set forth herein. The design, quality and component parts of each Unit of Equipment shall conform to all Interstate Commerce Commission and/or Department of Transportation requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such Units as of the date of this Agreement; and each Unit of Equipment shall be new standard-gauge rolling stock.

2. Manufacturer shall deliver Units of the Equipment, as hereinafter provided, to Buyer at Butler, Pennsylvania, beginning in May, 1971.

3. At all times during construction, the Equipment shall be subject to inspection by Buyer.

4. After delivery of and inspection of each Unit by Buyer or its agent, Buyer's chief mechanical officer, or his duly authorized representative, shall, if such Unit meets said Specifications, execute in duplicate and deliver to Manufacturer a certificate of acceptance. Such certificate of acceptance shall be conclusive evidence that the Unit covered has been delivered to the Buyer and conforms with said Specifications and is acceptable to Buyer in all details. On delivery of each Unit hereunder, Buyer will assume responsibility and risk of loss with respect thereto.

5. All Units of the Equipment not delivered as aforesaid on or before September 1, 1971, or such later date as the parties hereto shall agree in writing (hereinafter called the "Cut-Off Date"), shall be excluded from this Agreement and the parties hereto shall be released from their several obligations hereunder with respect to such Units as shall not have been delivered as aforesaid on or before the Cut-Off Date; *provided, however*, that Manufacturer's obligation to Buyer as to time of delivery is subject to delays due to accident, fire, flood, explosion, labor troubles, acts of government, including embargoes, priorities and allocations, war and war conditions, delays of carriers, delays or defaults of subcontractors, delays in receipt of materials, or any other cause or causes (whether or not of the same kind as herein specifically enumerated or whether or not existing on the date hereof) beyond Manufacturer's reasonable control.

If any Equipment shall be excluded from this Agreement pursuant to the proviso in the immediately preceding paragraph, and if the Manufacturer's failure to deliver such Equipment on or before the Cut-Off Date resulted from one or more of the causes set forth in the said proviso in the preceding paragraph of this Paragraph 5, the Buyer shall nevertheless be obligated to accept all such Equipment and pay the full purchase price therefor, determined as provided herein, if and when such Equipment shall be completed and delivered by the Manufacturer.

6. The estimated purchase price of the Equipment is \$16,000.00 per Unit (including prepaid freight charges from Butler, Pennsylvania to Chicago, Illinois, estimated to be \$200.00 per Unit) amounting to a total of \$8,000,000.00 for all Units (such aggregate amount being hereinafter called the "Purchase Price"). The aforesaid Purchase Price shall be reduced to the extent that any units of the Equipment shall be excluded from this Agreement pursuant to Paragraph 5, and shall be subject to adjustment on Manufacturer's invoice for various causes, including changes in manufacturing costs or otherwise as specified in Paragraph 11 hereof.

For the purpose of making settlement for the Equipment, the Equipment shall consist of one group (hereinafter called the "Group") of Units of the Equipment delivered to and accepted by Buyer hereunder; *provided, however*, if there shall at any time have been delivered to and accepted by Buyer Units of the Equipment and Manufacturer shall be prevented by any one or more of the causes referred to in the proviso in the first paragraph of Paragraph 5 hereof from delivering additional Units for a period of thirty days or more following the last day of delivery with respect to such delivered and accepted Units, such delivered and accepted Units shall, at Manufacturer's option, constitute an additional Group for the purpose of settlement.

The Buyer hereby promises to pay in cash to Owner at such place as the Owner may designate the Purchase Price of the Equipment as follows:

a. the sum of \$5,600,000.00, in fourteen equal semiannual installments of \$400,000.00 each, commencing on November 1, 1971 and ending May 1, 1978; and

b. the sum of \$2,400,000.00, in one installment (the "Final Installment") on May 1, 1978, unless payment of the Final Installment shall have been extended in accordance with the last paragraph of this Paragraph 6.

The unpaid portion of the Purchase Price in respect of a Group shall bear interest, payable semiannually on May 1 and November 1 in each year, commencing on November 1, 1971, from the Closing Date (as hereinafter defined) for such Group, at a rate equal to one-half of one percent per annum above the prime rate of interest of Continental Illinois National Bank and Trust Company of Chicago applicable to 90-day commercial loans in effect on May 1 of each year next preceding the interest payment date; *provided, however*, that such interest shall be not less than 5½% per annum and not more than 7½% per annum.

If the Owner and the Buyer shall so agree, payment of the Final Installment of the Purchase Price may be extended upon such terms and conditions as may be contained in an appropriate supplement to this Agreement, provided that such supplement is filed and recorded with the Interstate Commerce Commission, pursuant to Section 20c of the Interstate Commerce Act, prior to April 1, 1978.

7. Buyer may at its election, at any time and from time to time, upon at least five days' written notice from Buyer to Owner, voluntarily prepay any portion or all of the Purchase Price set forth in Paragraph 6, with accrued interest to the date of such prepayment on the amount prepaid. Any such prepayment of less than all of the unpaid portion of the Purchase Price shall be applied first toward the Final Installment provided for by subparagraph (b) of the third paragraph of Paragraph 6, and then toward the semiannual installments provided for in subparagraph (a) of the third paragraph of Paragraph 6 in the inverse order of their maturity. Any such prepayment may be made without premium.

8. The term "Closing Date" with respect to any Group shall mean such date, not more than fifteen business days following presentation by Manufacturer to Buyer of the invoice for such Group and the certificates of acceptance in respect thereof, as shall be fixed by Buyer by written notice, delivered to Owner in two counterparts at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

9. Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

Buyer will pay, to the extent legally enforceable, interest at the rate of 8% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, including by acceleration.

10. All payments provided for in this Agreement shall be made by Buyer in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

11. Prior to a Closing Date hereunder, Manufacturer will determine the final purchase price of the Equipment then and theretofore delivered to and accepted by Buyer by making final adjustments in accordance with the Specifications and will render a final invoice to the Buyer. If such final purchase price exceeds the Purchase Price set forth in Paragraph 6 hereof, Buyer will promptly pay such excess to Manufacturer in cash; and

if such final purchase price shall be less than the Purchase Price set forth in Paragraph 6 hereof, each installment of the Purchase Price of the Equipment set forth in Paragraph 6 hereof shall be correspondingly reduced, it being the intention of the Owner and the Buyer that the semiannual installments payable in accordance with subparagraph (a) of the third paragraph of Paragraph 6 shall total 70% of the Purchase Price and the Final Installment shall total 30% of the Purchase Price.

12. Until Manufacturer shall assign all the Equipment and the right to payments under Paragraphs 6 and 7 hereof, the term "Owner" as used in this instrument shall be deemed to mean Manufacturer. After any such assignment the term "Owner" shall be deemed to mean any person who shall acquire such ownership and right. Owner shall, and hereby does, retain the full legal title to and property in any and all of said Equipment until Buyer shall have made all of the payments, and shall have kept and performed all of the covenants, in this Agreement provided to be made, kept or performed by Buyer, notwithstanding the delivery of the Equipment to, and the possession and use thereof by, Buyer as herein provided.

13. Buyer covenants and agrees that it will cause each Unit of the Equipment to be kept numbered with the road numbers above specified and to be kept plainly marked with such markings as the Owner may designate, in lettering not less than one inch in height, by painted or stencilled markings placed upon both sides of each Unit of the Equipment, and Buyer agrees that it will not accept delivery of, or place the Equipment in operation or exercise any control or dominion over any part thereof, until said painted or stencilled markings have been so placed.

14. In the event that any Unit of the Equipment shall become worn out, lost, stolen, destroyed or irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called "Casualty Occurrences") prior to the payment in full of the Purchase Price, together with interest thereon and all other payments required hereby, the Buyer shall, within ten days after it shall have been determined that such Unit has suffered a Casualty Occurrence, fully inform the Owner in regard thereto. When the total Casualty Value (as defined herein) of Units having suffered a Casualty Occurrence (exclusive of Units having suffered a Casualty Occurrence with respect to which payment shall have been made to the Manufacturer pursuant to this Paragraph 14) shall exceed \$100,000 (or such lesser amount as the Buyer may elect), the Buyer shall, within 30 days of such event, pay to the Owner a sum equal to the total Casualty Value of such Units as of the date of such payment and shall file with the Manufacturer a certificate of a Vice President or the chief accounting officer of the Buyer setting forth the Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence.

Any money paid to the Owner pursuant to the preceding paragraph of this Paragraph 14 shall, so long as none of the events of default specified in Paragraph 29 shall have happened and be continuing, be applied, in whole or in part, as the Buyer may direct in a written instrument signed by any officer and filed with the Owner, to prepay a portion of the Purchase Price of the Equipment hereunder or to or toward the cost of a unit or units of new standard-gauge railroad equipment (other than work or passenger

equipment) to replace such Unit or Units having suffered a Casualty Occurrence, as the Buyer may direct in such written instrument. In case any such money shall be applied to prepay a portion of the Purchase Price it shall be so applied on May 1 or November 1 of any year (whichever is next subsequent to the date of payment pursuant to the preceding paragraph of this Paragraph 14) in the same manner as provided for prepayments under Paragraph 7 hereof.

The Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence (other than a replacement unit) shall be deemed to be that proportion of the original Purchase Price thereof as 6 plus the number of installment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including May 1, 1978, bears to 20. The Casualty Value of each replacement unit suffering a Casualty Occurrence shall be that proportion of the cost thereof (provided through the application of moneys paid to the Owner pursuant to the first paragraph of this Paragraph 14) as 6 plus the number of installment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including May 1, 1978, bears to 6 plus the number of such installment payment dates remaining as of the date of the acquisition of such replacement unit.

So long as none of the events of default specified in Paragraph 29 shall have happened and be continuing, any money held by the Owner pursuant to this Paragraph 14 shall, if any officer of the Buyer shall in writing so direct, be invested, pending its application as provided for in the second paragraph of this Paragraph 14, in such (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) open market commercial paper rated "prime" by a national credit agency or certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$50,000,000 in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called "Investments"), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Buyer may in writing direct. Any interest or earned discount received by the Owner on any Investments shall be held by the Owner and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Owner thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Owner for application pursuant to this Paragraph 14, and any excess shall be paid to the Buyer. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Buyer will promptly pay to the Owner an amount equal to such deficiency. The Buyer will pay all expenses incurred by the Owner in connection with the purchase and sale of Investments.

The Buyer will cause any replacement unit to be marked as provided in Paragraph 13. Any and all such replacement units of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the

name of the Owner subject to the provisions hereof, and the Buyer shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act of an appropriate supplemental agreement describing such replacement units) and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the title of the Owner to such replacement units. All such replacement units shall be guaranteed and warranted in like manner to the Buyer and the Owner as the Units replaced.

Whenever the Buyer shall file with the Owner, pursuant to the foregoing provisions of this Paragraph 14, a written direction to apply money to or toward the cost of a replacement unit of new standard-gauge railroad equipment, the Buyer shall file therewith:

(1) a certificate of a Vice President or the chief accounting officer of the Buyer certifying that such replacement unit is new standard-gauge railroad equipment (other than work or passenger equipment) and has been plated or marked as required by the provisions of this Paragraph 14 and certifying the cost of such replacement unit; and

(2) an opinion of counsel for the Buyer that title to such replacement unit is vested in the Owner free and clear of all liens and encumbrances except the rights of the Buyer under this Agreement, and that such unit has come under and become subject to this Agreement.

If one or more of the events of default specified in Paragraph 29 shall have happened and be continuing, then so long as such event of default shall continue all money then held by the Owner pursuant to this Paragraph 14 shall be applied by the Owner as if such money were money received upon the sale of Equipment pursuant to Paragraph 32.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Owner shall upon request of the Buyer, after deposit by the Buyer of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Buyer's vendee, assignee or nominee a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Buyer.

15. Except as provided in Paragraph 13, Buyer will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership thereof, or change or permit to be changed the identifying road numbers thereof (or any numbers which may be substituted as herein provided), except in accordance with a statement of new identifying road numbers to be substituted therefor, which shall previously have been filed with Owner by Buyer and recorded or filed in each public office where this instrument shall have been recorded or filed; *provided, however*, that the Equipment may be lettered "ATSF" or "Santa Fe," and may bear the circle and cross emblem of Buyer in any of its forms, and may be lettered with the name or initials of any railroad company which is permitted to use such Equipment as

hereinafter provided, or may be lettered in some other appropriate manner for convenience or identification of Buyer's interest therein.

16. Owner shall and hereby does retain the full legal title to and property in the Equipment until the Buyer shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Buyer as herein provided. When and only when Buyer shall have paid the full Purchase Price for all Equipment, together with interest and any and all other payments required hereby, and shall have performed all of Buyer's covenants and conditions herein contained, title to and property in all of the Equipment shall pass to and vest in Buyer without further transfer or act on the part of Owner, except that Owner shall, if so requested by Buyer, execute and deliver to Buyer a bill or bills of sale of all of the Equipment to Buyer free and clear of all liens and encumbrances created by any act, default or omission of Owner, and shall execute for record or for filing in public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of Buyer to all of the Equipment. The Buyer hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand of the Buyer.

17. In addition to other payments to be made by Buyer hereunder, Buyer shall assume and pay all, or reimburse the Manufacturer if the Manufacturer shall be required to pay any, excise, sales, gross income or other taxes with respect to this transaction which may be imposed by any governmental authority. Buyer shall pay promptly all taxes and assessments which may be imposed upon the Equipment or the earnings arising therefrom or the operation thereof, or by reason of the ownership thereof, after the delivery and acceptance thereof, by any jurisdiction in which the Equipment is operated, and shall keep at all times all and every part of the Equipment free and clear of all liens and encumbrances; *provided, however*, that Buyer may, in good faith, appropriately contest the same in any reasonable manner which does not affect Owner's title.

18. Buyer further covenants that it will comply in all respects with all the laws of the United States and of the States into which its operations involving the Equipment may extend during the term of this Agreement, and with all lawful requirements of the Interstate Commerce Commission and the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any of the Equipment, and in the event that said laws or requirements prescribe alteration of any of the Equipment, Buyer agrees to conform therewith, at its expense, and to maintain the same in proper condition for operation under such laws and requirements during the life of this Agreement; *provided, however*, that Buyer may in good faith contest the validity or applicability of any such law or requirement, in any reasonable manner which does not affect Owner's title.

19. Buyer covenants that it shall at all times after the delivery and acceptance of any Unit of the Equipment maintain and keep the same in good order and repair at its ex-

pense, and shall bear the risk and shall not be released from its obligations hereunder in case of any and all damage, loss or destruction of the Equipment from whatever cause arising; *provided, however*, that Manufacturer and any successor or successors of its manufacturing property and business shall not as to any of the Equipment be relieved from its warranty covering material and workmanship set forth herein or in the applicable Specifications therefor.

20. The Manufacturer guarantees that the Equipment will be built in accordance with the final agreed Specifications and drawings, and warrants the Equipment to be free from defects in material (except as to the specialties incorporated therein not manufactured by the Manufacturer) and workmanship under normal use and service, the Manufacturer's obligation being limited to making good at its plant any part or parts of any unit of the Equipment which shall, at any time within one year after delivery of such unit of the Buyer, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Manufacturer is expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on the part of the Manufacturer, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment.

21. Buyer agrees to furnish to Owner, once in every year as long as this Agreement shall be in force, an accurate inventory of the Equipment in actual service, and the road numbers and the description of such Equipment as may have been destroyed, and of all Equipment then undergoing, or then withdrawn from service for, general repairs.

22. Owner shall have the right, but shall be under no obligation, to inspect the Equipment at any reasonable time or times during the continuance of this Agreement, and Buyer covenants in that event to furnish all reasonable facilities for making such inspection.

23. Buyer shall after delivery and acceptance of the Equipment save, indemnify and keep harmless Owner from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Equipment or the use or operation thereof. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Purchase Price and the transfer of title to the Equipment as provided in Paragraph 16 hereof; *provided, however*, that Manufacturer shall not, as to any of the Equipment, be relieved from its warranty covering material and workmanship contained or referred to in this Agreement as the result of defects covered by said warranty. Manufacturer agrees to save, indemnify and keep harmless Buyer and Owner from and against any and all royalties, damages, claims, suits, judgments and costs that may arise because of any claim that Manufacturer's use of any design, device, appliance, or part upon, or process in connection with, any of the Equipment (except those specified or required or furnished by Buyer and not manufactured or controlled by Manufacturer) infringes any United States patent. With respect to the use in or about the construction or operation of the Equipment of any design specified by the Buyer and not developed by the Manufacturer, or article or material specified

by the Buyer and not manufactured by the Manufacturer, which infringes or is claimed to infringe upon any patent or other patent right, Buyer shall in like manner indemnify and keep harmless Owner. Prompt notice, in writing, shall be given by each party to the other party of any claims of patent infringement presented to such party with respect to the Equipment, articles or parts thereof, or the construction thereof, and the party responsible for such infringement, as above provided, shall promptly undertake and assume the defense thereof.

24. All or any of the rights of Manufacturer under this Agreement, including title to the Equipment and right to receive the payments herein provided to be made by Buyer, may be assigned by Manufacturer, by Assignment in substantially the form attached hereto, and reassigned by any assignee at any time and from time to time, *provided, however*, that no such assignment or reassignment shall subject any assignee to, or relieve Manufacturer or the successor or successors to its manufacturing property and business from, any of its obligations to construct and deliver the Equipment herein to be delivered in accordance with the applicable Specification, or to respond to its warranties and indemnities, contained or referred to in this Agreement, or in respect to any of its obligations under Paragraph 11 of this Agreement; and *provided further*, that no such assignment shall relieve Buyer from any of its obligations to make payments to Manufacturer pursuant to this Paragraph 24, and Paragraphs 5, 11 and 17 of this Agreement, to accept Equipment pursuant to Paragraph 4 and to observe its agreements regarding limitation of Manufacturer's liability and indemnities pursuant to Paragraphs 20 and 23, respectively. In case of assignment of this Agreement by the Manufacturer, prompt written notice of such assignment shall be given by the Manufacturer or the assignee to the Buyer, and the Buyer shall be protected in any payments made hereunder to the Manufacturer prior to notice of such assignment.

If this Agreement shall have been assigned by the Manufacturer, and the assignee shall not make payment to the Manufacturer with respect to Units of Equipment as provided in the instrument making such assignment, the Manufacturer will promptly notify the Buyer of such event and if such payment shall not have been previously paid by the assignee, the Buyer will, not later than ninety days after the date such payment was due, pay or cause to be paid to the Manufacturer the aggregate Purchase Price of such Units, together with interest from the date such payment was due to the date of payment by the Buyer at the prime rate of interest of leading New York City banks in effect the date such payment was due.

25. In the event that this Agreement is assigned or reassigned as hereinbefore provided, the rights of such assignee or reassignee to the entire unpaid Purchase Price, or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Manufacturer or the successors to its manufacturing property and business in respect of the Equipment or the manufacture, delivery or warrant thereof, or in respect of any indemnity herein contained or referred to, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Buyer by Manufacturer or the successors to its manufactur-

ing property and business. Any and all such obligations, howsoever arising, shall be and remain enforceable by Buyer against and only against Manufacturer and the successors to its manufacturing property and business, and shall not be enforceable against any party or parties in whom title to the Equipment or any of it, or any right of Manufacturer hereunder, shall vest by reason of any assignment or reassignment.

26. In the event of any such assignment or reassignment Buyer shall change the painted or stencilled markings to be placed on both sides of the Equipment so as to indicate the new ownership, such painted or stencilled markings to bear such words or legends as shall be specified by the new owner. If any such assignment is made before the delivery of the Equipment to Buyer, Manufacturer shall bear the cost of placing such painted or stencilled markings indicating ownership by the first assignee. The cost of placing painted or stencilled markings in connection with any subsequent assignment shall be borne by the new owner.

27. Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof upon its lines of railroad and upon those of any corporation a majority of whose capital stock shall be at the time directly or indirectly owned by Buyer, and upon tracks of others as to which Buyer at the time shall have trackage rights, and upon connecting and other railroads in the usual interchange or delivery of traffic.

28. Buyer covenants and agrees that it will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as hereinbefore provided, transfer possession of any of the Equipment, to any other firm, persons or corporation without first obtaining the written consent of Owner to such sale, assignment or transfer. Buyer further covenants and agrees that it will not pledge, hypothecate or in any way encumber, or permit the encumbrance of, any part or all of the Equipment.

29. In the event that any one or more of the following events of default shall occur to-wit:

(a) If Buyer shall fail to pay in full any installment of the Purchase Price, or interest thereon, as provided in Paragraph 6 hereof for more than thirty days after the same shall have become due and payable; or

(b) If Buyer shall fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement on its part to be kept and performed for more than sixty days after Owner shall have demanded in writing performance of same; or

(c) If a proceeding in reorganization, bankruptcy or insolvency be instituted by or against Buyer or its property and if any trustee or receiver appointed therein fails to adopt and become bound by the terms, provisions and conditions of this Agreement within ninety days after such appointment;

then at any time after the occurrence of such an event of default, Owner may, upon written notice to Buyer, and upon compliance with any legal requirements then in force and applicable to such action, declare immediately due and payable, without further demand,

the entire Purchase Price of the Equipment, whether the same shall then have fallen due or not, together with unpaid interest to date of such declaration.

30. Owner may at its election waive any such event of default and its consequences and rescind and annul any such declaration, by written notice to Buyer to that effect; *provided, however*, that Owner shall so do if, before sale of the Equipment under the authority of Paragraph 32 hereof, Buyer shall pay all costs and expenses of Owner incident to any such default and to the enforcement by Owner of the provisions hereof, and all sums which shall then have become due and payable by Buyer hereunder (other than such as shall have become due only because of a declaration under Paragraph 29 hereof) and shall remedy all other existing defaults or make provision therefor satisfactory to Owner. Thereupon, in any such case the respective rights of the parties shall be restored as if no such default had occurred and as if no such declaration had been made; but no such waiver, rescission or annulment shall limit or affect Owner's right to assert any other default, or impair its rights or remedies consequent thereon.

31. If an event of default shall occur, as hereinbefore provided, then at any time thereafter during the continuance of such default, and after declaring the entire Purchase Price immediately due and payable as hereinbefore provided, Owner may, without further notice or demand except to the extent necessary in order to comply with any legal requirements, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any of it, together with all present and future improvements, attachments and accessories thereof, without liability to return to Buyer any sums theretofore paid, and free from all claims whatsoever except as hereinafter in Paragraph 35 provided, and may remove the same from the use and possession of Buyer. For such purpose Owner may enter upon Buyer's premises where any Equipment may be located, and may use and employ in connection with such removal, at the expense of Buyer, any supplies, services and aids, and any available trackage and other facilities of Buyer, without process of law. Buyer shall deliver the Equipment, or any of it, with all improvements, attachments and accessories thereof, at Buyer's own cost, at such place or places as Owner may reasonably designate on the railroad of Buyer, and for such purpose shall move or draw the Equipment in the usual manner and at the customary speed of trains. In case of such retaking or delivery Owner shall have the right to store the same without charge upon the premises of Buyer at any point or points selected by Owner and reasonably convenient to Buyer. It is hereby expressly agreed that performance of this Agreement to deliver and store without charge the Equipment as hereinbefore provided is of the essence of the Agreement between the parties and that, upon application to any court of equity having jurisdiction in the premises, Owner shall be entitled to a decree against Buyer requiring specific performance hereof.

32. If an event of default shall occur, as hereinbefore provided, then at any time thereafter during the continuance of such default, and after declaring the entire Purchase Price immediately due and payable as hereinbefore provided, Owner with or without retaking possession thereof may sell the Equipment, or any of it, and any such improvements, attachments and accessories, free from any and all claims of Buyer, or of any other party claiming by, through or under Buyer at law or in equity, at public or private sale and

with or without advertisement as Owner may determine, all subject to and in compliance with any legal requirements then in force and applicable to such sale. To the extent permitted by any such legal requirements, any sale or sales hereunder may be held or conducted at Chicago, Illinois, at such time or times as Owner may fix (unless Owner shall, as so permitted, specify a different place or places, in which case the sale or sales shall be held at such place or places and at such time or times as Owner may specify), in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as Owner may determine in compliance with any such legal requirements. Buyer shall be given written notice of such sale as provided in any such applicable legal requirements, but in any event no less than ten days prior thereto, by telegram or registered mail addressed to Buyer at 80 East Jackson Boulevard, Chicago, Illinois 60604. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of Buyer to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same, or a better, price as that offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, Owner may itself bid for and become the purchaser of the Equipment or any of it so offered for sale without accountability to Buyer (except to the extent of surplus money received as hereinafter provided in Paragraph 35 hereof), and in payment of such Purchase Price Owner shall be entitled to the extent aforesaid to have credited on account thereof all sums due to Owner by Buyer hereunder.

33. Each and every power or remedy hereby specifically given to Owner shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by Owner. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others.

34. No delay or omission of Owner in the exercise of any such power or remedy, and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default, or any acquiescence therein.

35. If Owner shall exercise any of the powers or remedies conferred upon it hereunder, Buyer shall have the right, after paying or causing to be paid to Owner all sums owed hereunder, including Owner's proper costs and expenses incident to the collection thereof, to require title to the Equipment, if not previously sold by Owner pursuant to the provisions hereof, to be transferred and assigned by Owner to Buyer free from any further liabilities or obligations to Owner. If after payment of all proper costs and expenses of Owner incurred in the enforcement of its remedies hereunder and after applying all sums of money realized by Owner under the remedies herein provided there shall remain any amount due to it under the provisions of this Agreement, Buyer shall pay the amount of such deficit to Owner. If after payment of all proper costs and expenses of Owner incurred in the enforcement of its remedies hereunder and after applying as aforesaid all sums realized by Owner there shall remain a surplus in the possession of Owner, such surplus shall be paid to Buyer.

36. Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. If, however, the conflicting provisions of any applicable state law may be waived they are hereby waived by Buyer to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

37. Any extension of time granted by Owner to Buyer for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of Owner reserved hereunder or any of its rights and remedies hereunder or otherwise existing.

38. Buyer shall cause this Agreement to be duly filed with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and otherwise as may be required by law for the full protection of the title of Owner; and Buyer shall from time to time do and perform any other act, and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by Owner for the purpose of such protection of its title and rights, or for the purpose of carrying out the intention of this Agreement.

39. Buyer will pay all reasonable costs, charges, and expenses, except the counsel fees of the Manufacturer, of any parties acquiring interests in the first assignment hereof incurred in connection with such first assignment and payments to the Manufacturer by such first assignee, including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing, registration or recording of this Agreement, of the first assignment by the Manufacturer of this Agreement, of any instrument supplemental to or amendatory of this Agreement or such first assignment and of any certificate of the payment in full of the Purchase Price due hereunder.

40. This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

41. This Agreement, together with the Specifications hereinabove referred to, constitutes the entire Agreement between Buyer and Manufacturer with respect to the sale of the Equipment herein referred to. No variation or modification of this Agreement, and no waiver of any of its provisions or conditions, shall be valid unless in writing and signed by duly authorized officers of the parties.

42. Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) To Buyer at 80 East Jackson Boulevard, Chicago, Illinois 60604,

(b) To Manufacturer at 200 South Michigan Avenue, Chicago, Illinois,

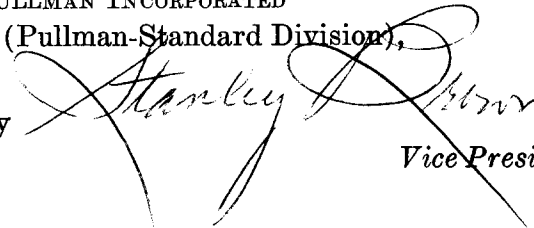
(c) To any assignee of Manufacturer, at such address as may have been furnished in writing to Buyer by such assignee, or at such other addresses as may have been furnished in writing by such party to the other parties to this Agreement.

43. This Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers and under their corporate seals, all as of the date first above written.

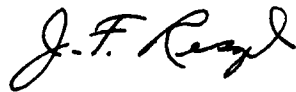
PULLMAN INCORPORATED
(Pullman-Standard Division),

By


Vice President.

[CORPORATE SEAL]

Attest:



Assistant Secretary.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

By


Vice President—Finance.

[CORPORATE SEAL]

Attest:


Assistant Secretary.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

On this 30th day of April, 1971, before me personally appeared Stanley Brown to me personally known, who, being by me duly sworn, says that he is a Vice President of Pullman Incorporated (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard T. Moberg
Notary Public, Cook County.

MY COMMISSION EXPIRES MARCH 31, 1974

My commission expires

[NOTARIAL SEAL]

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

On this 30th day of April, 1971, before me personally appeared R. W. Harper, to me personally known, who, being by me duly sworn, say that he is Vice President-Finance of The Atchison, Topeka and Santa Fe Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

D. J. Feeney
Notary Public, Cook County.

My commission expires **MAY 29, 1973**

[NOTARIAL SEAL]

Agreement and Assignment (hereinafter called "Assignment"), dated as of May 1, 1971, by and between **PULLMAN INCORPORATED** (Pullman-Standard division), a Delaware corporation (hereinafter called "Manufacturer"), and **CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO**, a national banking association (hereinafter called "Assignee");

WITNESSETH THAT :

WHEREAS, Manufacturer and The Atchison, Topeka and Santa Fe Railway Company (hereinafter called "Buyer"), have entered into a Conditional Sale Agreement, dated as of May 1, 1971 (hereinafter called the "Sale Agreement"), covering the manufacture, sale and delivery by Manufacturer and the purchase and payment for by Buyer of the covered hopper cars described in the Sale Agreement (said cars being hereinafter called the "Equipment" and "Unit" or "Units");

Now, THEREFORE, for value received, and in consideration of the acceptance of this assignment by Assignee, upon the terms and conditions hereinafter set forth, it is agreed:

1. Except as provided in Paragraph 2 hereof, Manufacturer does hereby sell, assign, transfer and set over unto Assignee, its successors and assigns, and grants to Assignee, its successors and assigns, a security interest in and to, all of the right, title and interest of Manufacturer under the Sale Agreement in and to the Equipment, upon payment by Assignee to Manufacturer of the amount required to be paid under Paragraph 6 hereof for such Equipment, in and to the payments of Purchase Price and interest thereon to be made by Buyer, in and to other sums payable by Buyer under the Sale Agreement and in and to all proceeds of any of the foregoing, together with all of the rights of Manufacturer in respect thereof set forth in the Sale Agreement as applying to Manufacturer thereunder, as therein defined, but without recourse upon Manufacturer for or on account of any failure of payment or compliance with any of the terms or provisions of the Sale Agreement on the part of Buyer.

2. This Assignment shall not pass to Assignee the right to receive any amount payable by Buyer to Manufacturer under Paragraphs 5, 11, 17, or 24 of the Sale Agreement, nor shall this Assignment relieve Buyer of its obligations to Manufacturer under Paragraphs 4, 5 and 23 of the Sale Agreement.

3. This Assignment shall not subject Assignee to, or relieve Manufacturer or any successor or successors to its manufacturing property and businesses from, complying with the obligations of Manufacturer to construct and deliver the Equipment as in the Sale Agreement provided, or complying with the provisions of Paragraph 20 of the Sale Agreement, or relieve Manufacturer from its obligations under Paragraph 23 of the Sale Agreement; it being understood and agreed, however, that notwithstanding this Assignment or any subsequent assignment hereof, all said obligations of Manufacturer to Buyer, in respect of the Equipment, shall be and remain enforceable by Buyer, its successors and assigns, against, and only against, Manufacturer, and its successor or successors.

4. In furtherance of this assignment and transfer, Manufacturer does hereby authorize and empower Assignee to ask, demand, sue for, collect, receive and enforce payments to be made, and compliance, on the part of Buyer, with the terms and provisions of the

Sale Agreement in respect of the Equipment, but in the name of, and at the expense and liability of, and for the sole benefit of Assignee.

5. At or before delivery of each Unit of the Equipment to Buyer, Manufacturer will plainly, distinctly, permanently and conspicuously paint or stencil on each side of each of said Units the following words in letters not less than (1) inch in height:

"CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, OWNER."

6. The Assignee, on the Closing Date for a Group, fixed as provided in Paragraph 8 of the Sale Agreement, shall pay to Manufacturer, an amount equal to the Purchase Price of such Group; *provided, however*, that on the final Closing Date under the Sale Agreement, the Assignee shall pay to Manufacturer an amount equal to the lesser of (i) the Purchase Price of such Group or (ii) the difference between the final purchase price of the Equipment determined pursuant to Paragraph 11 of the Sale Agreement and all amounts theretofore paid by Assignee to Manufacturer hereunder; and *provided, further*, that there shall have been delivered to Assignee, on the Closing Date for such Group, the following documents, in form and substance satisfactory to it:

(a) A Bill of Sale from Manufacturer to the Assignee, transferring title to the Units of the Equipment in such Group to the Assignee and warranting to the Assignee and to Buyer that at the time of delivery to Buyer the Manufacturer had legal title to such units and good and lawful right to sell such Units and that title to such Units was free of all claims, liens and encumbrances of any nature except only the rights of Buyer under the Sale Agreement;

(b) A certificate or certificates of acceptance signed by Buyers' chief mechanical officer or his duly authorized representative, stating that the Units of the Equipment in such Group have been inspected and accepted by him on behalf of Buyer and further stating that all such Units have been marked as required by Paragraph 5 hereof;

(c) Manufacturer's invoice for the Units of the Equipment in such Group, accompanied by or having endorsed thereon a certification by Buyer as to the correctness (subject to adjustment pursuant to Paragraph 11 of the Sale Agreement) of the price for such Units;

(d) An opinion of counsel for Manufacturer stating that: (i) Manufacturer is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Sale Agreement has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms, (iii) this Agreement has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms, (iv) Assignee is vested with all right, title and interest of Manufacturer in and to the Sale Agreement purported to be assigned to the Assignee by this Assignment, and (v) title to the Units of the Equipment in such group is validly vested in Assignee, free, at the time of delivery thereof to Buyer under the Sale Agreement, of all claims, liens and encumbrances except only the rights of Buyer under the Sale Agreement;

(e) An opinion of counsel for Buyer stating (i) that Buyer is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) that the Sale Agreement has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms, (iii) that the Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation is necessary for the protection of the rights of Assignee in any state of the United States of America, (iv) that title to the Units of the Equipment in such Group is validly vested in Assignee, free of all claims, liens and encumbrances except only the rights of Buyer under the Sale Agreement, and (v) that no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Sale Agreement.

7. The obligation of Assignee to pay such Purchase Price shall only extend to such Units as shall be delivered to and accepted by Buyer on or before September 1, 1971, and the duty of the Assignee to pay such Purchase Price of any such Units not delivered and accepted on or before that date shall absolutely cease. This paragraph shall be effective despite the proviso in the first paragraph of Paragraph 5 of the Sale Agreement unless otherwise agreed in writing by Manufacturer and Assignee, on or before September 1, 1971.

8. Manufacturer represents and warrants to Assignee, its successors and assigns, that the Sale Agreement was lawfully executed by it for a valid consideration, that the Sale Agreement is, as to Manufacturer, a valid and existing agreement binding upon Manufacturer in accordance with its terms and is now in force without amendment thereto.

9. Manufacturer covenants and agrees that it will construct the Equipment in full and complete accordance with the Sale Agreement, and will deliver the same from time to time, to Buyer free of all claims, liens and encumbrances except only the rights of Buyer under the Sale Agreement, in accordance with the provisions of the Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions in the Sale Agreement set forth to be performed and complied with by Manufacturer. Manufacturer further covenants and warrants that it will have good and lawful right to sell each Unit of the Equipment, and that it will warrant and defend the title to the same against the lawful demands of all persons whomsoever based on claims originating prior to the acceptance thereof by Buyer; all subject, however, to the provisions of the Sale Agreement and the rights of Buyer thereunder.

10. Manufacturer represents and warrants that the right of Assignee to receive from Buyer the entire unpaid aggregate Purchase Price of the Equipment delivered to and accepted by Buyer, and interest thereon, as well as such other rights as are assigned hereunder, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Manufacturer, or any successor or successors to its manufacturing property and business, in respect of the Equipment or the manufacture, delivery or warranty thereof, or arising under Paragraphs 20 or 23 of the Sale Agreement, nor subject to any defense, set-off, counterclaim or recoupment what-

soever arising by reason of any other indebtedness or liability at any time owing to Buyer or Manufacturer or its successor or successors.

11. Manufacturer agrees to indemnify, save and keep harmless Assignee from and against any and all royalties, damages, claims, suits, judgments and costs that may arise because of any claim that Manufacturer's use of any design, device, appliance, or part upon, or process in connection with, any of the Equipment (except those specified or required or furnished by Buyer and not manufactured or controlled by Manufacturer) infringes any patent.

12. Assignee may assign its rights under the Sale Agreement, including the right to receive any payments due or to become due to it from Buyer thereunder in respect of said Equipment. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Assignee hereunder.

13. This Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

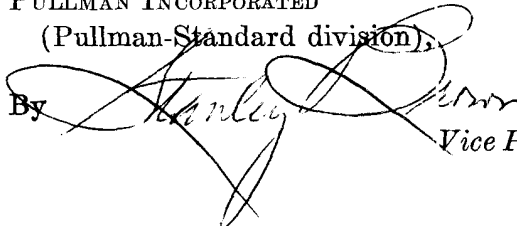
14. This Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers and under their corporate seals, all as of the date first above written.

PULLMAN INCORPORATED

(Pullman-Standard division).

By


Vice President.

[CORPORATE SEAL]


Attest:



Assistant Secretary.

CONTINENTAL ILLINOIS NATIONAL BANK AND
TRUST COMPANY OF CHICAGO,

By


CAREN L. REED
VICE PRESIDENT

Vice President.

[CORPORATE SEAL]

Attest:


Assistant Cashier.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

On this *30th* day of April, 1971, before me personally appeared *Stanley Brown* to me personally known, who, being by me duly sworn, says that he is a Vice President of Pullman Incorporated (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard C. Muehlenberg
Notary Public, Cook County.
MY COMMISSION EXPIRES MARCH 31, 1974

My commission expires

[NOTARIAL SEAL]

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

On this *30th* day of April, 1971, before me personally appeared C. L. REED, to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of Continental Illinois National Bank and Trust Company of Chicago, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

C. L. Reed
Notary Public, Cook County.

My commission expires

[NOTARIAL SEAL] ~~MY COMMISSION EXPIRES MARCH 31, 1974~~

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment as of May 1, 1971.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

By

A handwritten signature in cursive script, appearing to read "R. M. Harper".

Vice President—Finance.